



TITLE:

<Articles>What Does Google Street View Bring about? -Privacy, Discomfort and The Problem of Paradoxical Others-

AUTHOR(S):

Kawaguchi, Kanako; Kawaguchi, Yukiko

CITATION:

Kawaguchi, Kanako ...[et al]. <Articles>What Does Google Street View Bring about? - Privacy, Discomfort and The Problem of Paradoxical Others-. Contemporary and Applied Philosophy 2012, 4: 19-34

ISSUE DATE:

2012-08-09

URL:

<https://doi.org/10.14989/180276>

RIGHT:

What Does Google Street View Bring About?: Privacy, Discomfort and The Problem of Paradoxical Others *

Kanako KAWAGUCHI, Yukiko KAWAGUCHI

Abstract

In this paper, we analyze the problems of Google Street View (GSV hereafter) in terms of what we call the discomfort theory of privacy and the concept of "paradoxical other." The discomfort theory of privacy claims that the invasion of privacy does not lie in the infringement of the right to privacy but the discomfort incurred in the form of the invasion of two kinds of human values: autonomy and human relationship. A "paradoxical other" of someone is, in short, some unknown person who identifies that someone but whom you cannot identify. To introduce and justify the discomfort theory of privacy, we survey the problems of GSV in Japan and point out that the GSV causes the discomfort of some sort which has not been classified properly in the currency accepted understanding of the encroachment on privacy and the right to privacy in Japan. Next, we analyze the concept of a *paradoxical other*, and show that the nature of discomfort arising from the GSV concerns certain essential values such as autonomy and the quality of human relationships discussed in previous studies. According to our analysis, the potentially increasing existence of *paradoxical others* in the era of the Internet and social media is likely to prompt more frequent incurrence of the relevant kinds of discomforts. We show how what the GSV does symbolizes a society which depreciates people's basic values of autonomy and good human relationship.

Keywords: Google Street View, theory of privacy, paradoxical other, Social Networking Service(SNS)

Introduction

The Internet began to dominate Japan in the middle of 90s and has become a necessity for people from all walks of life. Along with it, a new privacy issue caused by what we call the problem of a "paradoxical others" has emerged. By a "paradoxical other," we mean a person other than you who knows who and/or what you are but who you cannot know is who or what: viz., some unknown person who identifies you but whom you cannot identify. The existence of such a person, or your suspicion of the existence of such a person, brings you the discomfort of

* CAP Vol. 4 (2012-2013) pp. 19-34. submitted: 2012.3.27 accepted: 2012.6.21 category: original article published 2012.8.9

some sort which involves no physical or financial damage. There are two types of discomfort: one is associated with actual harm, and the other not. In many cases, the latter kind of discomfort, i.e., harmless discomfort, has been considered as not being caused by the infringement of a right, but even in such cases, the fact that there is a discomfort can not be denied. The *paradoxical other* is among the causes of the discomfort without the infringement of a right.

In this paper, we analyze the problems of Google Street View (GSV hereafter). GSV is one of the new services provided by Google, and brings out the same sort of discomfort but it has not been regarded as an invasion of privacy in Japan yet. The invasion of privacy is different from the infringement of the right to privacy. For the former encroaches on not the right but some precious and valuable things which are not entitled to be called rights, while the latter infringes both values and a right. In Japan's jurisprudential understanding, the invasion of privacy has not been equated the infringement of the right to privacy so that as a consequence, GSV is being interpreted as legal.

Now a question to be asked is: what exactly is the discomfort people feel in the face of the GSV? We show that, when your privacy is intruded on, some values exist whose protection is perceived to be deprived of in some respect, and describe the values whose protection is felt to be deprived of in the alleged cases of the privacy being intruded on. In clarifying what is not protected on occasion of the invasion of privacy, we show that it is not the right. We then proceed to reveal the hidden and often forgotten structure of the concept of privacy by generalizing the cases where people feel their privacy intruded, and conclude our discussion with the case of GSV analyzed by the application of the newly established theory of privacy.

In the first section, we survey the problems of GSV in Japan and point out that the GSV causes the discomfort of some sort which has not been classified properly in the currency accepted understanding of the encroachment on privacy and the right to privacy in Japan. Next, we analyze the concept of a *paradoxical other* which is essential for the understanding the nature of discomfort arising from the GSV and sort out the existing set of concepts of privacy and their relationships with certain essential values such as autonomy and the quality of human relationships discussed in previous studies. The four-way relationship among the *paradoxical other*, discomfort, the basic values and privacy is then discussed and defined. Lastly, we give the overall picture of the GSV problems and show how what the GSV does symbolizes a society which depreciates your basic values.

1 Google Street View and The Privacy Crisis

1.1 The suspicious GSV

GSV is an Internet service provided by Google Inc. With a postal address entered in Google Maps^{*1} or Google Earth^{*2}, GSV displays the photographed landscapes and streets of the address. In GSV, the postal address, map information and the photographs of street scenes are linked with each other, and thus more accessible on the Internet instantaneously than before. GSV adds nothing to what you would potentially know on the spot in person. But there are cases where GSV is considered by some to invade privacy. Some people might feel their privacy is invaded either because you have good reason to assume some people can associate their pieces of information which they could not get without GSV, or because they suspect everyone knows what only you or those you know, like your friends and the deliverer from Amazon, would know otherwise. Some information hidden out of the public eye could be revealed by GSV when other personally identifiable pieces of information such as a name was connected to some public contents. That was why GSV and Google were thought to invade privacy. GSV is also said to have the problem of filming those events behind the walls which passersby are to be blindfolded of. To photograph inside the walls would be an invasion of privacy, and it is reasonable that people suspect GSV is not a fully reliable system.

The fact that there have been a significant number of lawsuits against GSV reveals the risks it has. Even in Japan, where GSV has not been sued, there were a number of public discussions about the legitimacy of GSV, including those about (1) revealing private information; (2) takedown requests; (3) the height of GSV cameras; and (4) extensive map information, before Google changed its policy in 2009.

In the first place, by taking street scenes, GSV is in the position of revealing the information some people do not want to make publicly available. Their personal things like laundries, nameplates, license plates, pets etc. It is also a problem that Google takes images from private roads and that you had no chance of knowing what would be taken when the GSV car passed by. You could not tell Google cars from ordinary vehicles. Secondly, Google did and does employ the opt-out method in regard to the unwanted display of pictures. You need to send requests to take down pictures from the Google site if you do not want them to be displayed. If you do not use or hardly use the Internet, you are in trouble unbeknownst to you. You could not know that your information might be shared on the Internet. You cannot request to remove the information because you do not know that the information is there. Thirdly, GSV's cameras were mounted at the height of 2.5 meters. GSV aims at virtual walking, but the average position

^{*1} <http://maps.google.co.jp/>

^{*2} <http://www.google.co.jp/intl/ja/earth/index.html>

of the human head cannot be that high. GSV would be said to help thieves and burglars to prepare for their jobs by taking advantage of over-the-fence views of your houses and gardens put on the Internet. And lastly, GSV provides us with more extensive map information than ever. There was an argument that GSV could add to the discrimination against certain groups of people. The geographical location of residential areas is easily identified by a postal address and GSV combined. Some can search the Internet for a certain area and associate it with the groups ending up with marital, professional and career disadvantages on the part of the member of the groups.

On May 13, 2009, three of the four problems were mitigated by Google's policy change in Japan. In response to the concern about the revelation of information, Google Japan announced that it would blur faces, license plates, and nameplates on GSV images filmed in cities around Japan^{*3}. Google coped with the problem of takedown request by setting up a call centre. Google accepted the requests only via the Internet before the policy change, and now it does by telephone as well. It is a commendable approach for non-Internet-connected people. Google announced that it would lower the height of cameras on Google cars to 2.05 meters, and reshoot all areas. The chance of private things being shot have greatly reduced and that of being victimized as well. The problem related to discrimination actually remains a problem, which should be discussed in the wider and more general context.

1.2 The discomfort with GSV in Japan

Japan's Ministry of Internal Affairs and Communications publicized its opinion in 2009 to the effect that GSV was not illegal^{*4}, ^{*5}. It seems to have meant that it was "not illegal" only in the sense that, while there might have been some infringement of privacy, the infringement was not of any legally definable right. In the normal legal practice in Japan, the plaintiffs sue for the

^{*3} "News from Google Japan (Japanese)" http://googlejapan.blogspot.com/2009/05/blog-post_5855.html. Accessed Feb 20, 2012

^{*4} This comment, in a plan for the first proposal on the issues related with using the ICT service, is released by a working group in the Ministry of Internal Affairs and Communications considering the legal problems of the locational information providing services with photographs including GSV, on July 22nd, 2009. The working group made the first proposal based on the plan on August 27th in the same year. In the first proposal, the working group said, "... as long as companies offering the services give care to people, we think that a large part of the services does not break the law". http://www.soumu.go.jp/main_content/000035957.pdf (original text written in Japanese, translated by the authors) Accessed Feb 10, 2012

^{*5} The trial of Sony versus Hollywood studios, which is called "Betamax case," is an example of a legal decision that users cause an infringement of right. In the trial, the Supreme Court gave a decision that the new product VTR is legal. Considering the trial of Grokstar, which lost the case on the ground that it offered not a product but a platform, GSV might not be fully justifiable because it is similar in offering an online service. See especially "Grokster shuttered in court settlement," by Grant Gross, IDG News Service, Nov. 7, 2005. <http://www.macworld.com/article/47841/2005/11/grokster.html> Accessed Feb 10, 2012

infringement of rights^{*6} on the assumption that privacy is a human right so that the ministry did not view GSV as invading the right to privacy, which is, to them, the same as privacy itself.

The national government and the local governments do not necessarily agree^{*7}. We are at a loss what GSV has brought about in Japan in the light of disconcerted attitudes towards GSV.

We pay attention to the fact that some people feel discomfort against GSV. In Japan, the type of discomfort has not been discussed seriously in the legal context because discomfort is always weighed in terms of the resulting damage. The incurrence of discomfort without real damage, physical or financial, does not consist of the infringement of right in the Japanese legal context. In most of the cases about GSV discussed above there are no real damages, hence no infringement of rights. Without real damage there is no real legal sense of talking about discomfort. The fact that there is a discomfort with GSV cannot be denied, however^{*8}. Though it is not the case that there is a breach of the right wherever there is discomfort, it seems that there is an intrusion not of the rights but something else. There are two kinds of discomfort: one with damage, the other without damage. The concern about privacy in the context of GSV has not been taken seriously in Japanese legal system because the critics of GSV could not be convincing you enough about the existence of damages. Given this fact, we could safely assume that the discomfort brought about by GSV is of the latter kind and will pursue the nature of this type of discomfort in what follows. We show that the discomfort in the face of GSV has arisen not from the breach of the rights but other kind of infringement.

2 The relation between the discomfort from GSV and privacy

2.1 The relation between paradoxical others and the discomfort brought by GSV

We feel uncomfortable in using GSV or knowing that someone is using GSV. We introduce a new way of understanding the concept of privacy by elucidating the nature of this discomfort.

In the standard use of the word, the other means a person who is distinct from, different from, or opposite to something or oneself^{*9}. Others cannot link your personal information with your personalities, and they do not bother to learn about the details of you. You and the other are indifferent mutually. In contrast, the *paradoxical other*, is a person other than you who knows

^{*6} With the case about information privacy, in Japan, so-called "the Personal Information Protection Law" went into effect in April 2005.

^{*7} "Comments on Google Street View by president of the Tokyo Metropolitan Government Information Disclosure and Personal Information Protection Council (Japanese)." <http://www.metro.tokyo.jp/INET/KONDAN/2009/05/40j5p200.htm> Accessed May 14, 2010 Other local authorities, Yokohama City, Suginami Ward (Tokyo) etc., released a statement to accuse GSV, but these actions declined due to the announcement by Ministry of Internal Affairs and Communications.

^{*8} As to this point, for example, see the following article. <http://www.j-cast.com/2008/08/11024982.html?p=1> Accessed May 20, 2011

^{*9} Otherness we argue here may be related to the otherness argued by Parfit. Parfit, D. (1984). *Reasons and Persons*. Oxford University Press. And the word, the other in this paper is that we translate the Japanese word *tanin* into English.

who and/or what you are but who you cannot know is who or what, namely, some unknown person who identifies you but whom you cannot identify. You and the *paradoxical other* are indifferent unilaterally. Your personal information is linked to you by the *paradoxical other*. Her presence is paradoxical in the sense that she is some unknown person who identifies you but whom you cannot identify. A strange and asymmetrical relationship is built between the *paradoxical other* and you.

To understand what the *paradoxical other* is really up to, we analyze the following three cases. Supposes that you attend a wedding reception of one of your friends. It is the very first time you saw the bride. You hear some stories about her at the party. You have a few pieces of information about her now, but she cannot identify you because she does not know you yet. Under the present condition you are a *paradoxical other* on her part.

Supposes, next, that you are an enthusiast of a certain magician. At his show, a large portion of spectators know his profile but he does not know them. You then are a *paradoxical other* to the magician in this case. Public characters live among plenty of *paradoxical others*.

A public servant working at a reception desk of a town hall is capable of gathering your personal information in the line of duty. This case is different from that of the bride in that the bride neither knows you nor your knowledge of her. In the case of the civil servant, you know her face to face without having any personal information of her, and that she is in the position of acquiring your personal information. The public servant and your family doctor are not *paradoxical others* to you.

It is not uncommon for any of us to be put in the situation of the first type. It grows even the commoner, the more widely the Internet propagates. On the Internet you have immediate access to various kinds of information with the aid of search engines^{*10}, which crawl, index and rank, and still stay unshocked even when you came across people's hidden secrets. The Internet has drastically reduced the cost to gaining any piece of information that identifies individuals. The services, including GSV and social networking services (hereafter SNS), which might display private information on the Internet without announcing the practice are partly responsible for reducing information-gathering cost.

As a result, you are more and more aware of the existence of *paradoxical others* to you. If there were actually no paradoxical others around you, you would feel discomfort merely from the suspicion that there might be *paradoxical others* who peeked at or overhear you. Thus, the emergence and multiplication of the *paradoxical others*, in the age of Internet, has brought out the kind of discomfort described in the previous section.

^{*10} More about the relation between search engines and privacy, see the following paper: Tavani, H.T. (1997). "Internet Search Engines and Personal Privacy." *Computer Ethics: Philosophical Enquiry*, Joroen van den Hoven (ed.), Department of Philosophy, Erasmus University.

2.2 Two basic values related to privacy

People change their behavior when they think they are looked at^{*11}. To hinder their spontaneous actions equates with the encroaching on autonomy. It is a violation of your values because autonomy is one of the values to be ensured in your life. Quite a few researchers, such as Warren and Brandeis, Bloustein, Gavison, Johnson and others, point out that an unjust observation brings about the violation of autonomy and that autonomy cannot be kept without privacy^{*12, *13}. They have emphasized that human beings need privacy to hold the first value, autonomy^{*14}. In the situation where people are, or believe to be, observed, it is hard to act freely. Since they are naturally curious of the others' affairs, it is impossible for them to prohibit an unjustifiable inquiries or observations unless the concept of privacy is there. Thus, having your privacy protected allows you to act spontaneously and to keep autonomy^{*15}. Privacy here means a situation or a condition which allows you to be free from prying eyes.

Some thinkers, most notably Fried and Rachels, assert that protecting privacy is a precondition of the establishment of sound human relationship, which, we think, is also one of the basic values. There are two similarities between Fried and Rachels, who supports and strengthens Fried's argument. Both agree that we need to share our personal information with our acquaintances when we build personal relationships. Fried says as follows: to be friends or lovers persons must be intimate to some degree with each other. But intimacy is the sharing of information about one's actions, beliefs, or emotions which one does not share with all, and which one has the right not to share with anyone^{*16}. Privacy information, we argue, includes not only what Fried argues but also locatable information linked up to someone.

^{*11} "Fake Watchful Eyes Discourage Naughty Behavior." December 10, 2010, <http://www.wired.com/wiredscience/2010/12/eyes-good-behavior/> Accessed Feb 10, 2012.

^{*12} Among the works which argue that privacy is important to protect autonomy as one of the values of human being are Blowstein, E.J. (1964). "Privacy as An Aspect of Human Dignity An Answer to Dean Prosser." *New York University Law Review* 39, pp.962-1007; Rachels, J. (1975). "Why Privacy is Important." *Philosophy & Public Affairs* 4(4), (rpt.) F. D. Schulman (ed.), *Philosophical Dimensions of Privacy*, Cambridge University Press, 1984, pp.291-299.

^{*13} Of course, there are many positions on what values relate to privacy. We do not discuss here what kind of value privacy has, for example, intrinsic value, instrumental value or so.

^{*14} Moor objects this point with the example of "peeping Tom." In his argument, Tom energetically gathers a woman's information by using the Internet, but she does not notice that. In this situation, Moor says, her autonomy is not encroached though her privacy is being lost. Therefore, privacy is not always related with autonomy. In this paper, we discuss a bad feeling which people feel when they think they may be looked at. So we argue that even if the woman should not notice the invasion of privacy, her autonomy may be encroached by noticing that her private information may be searched. For, those who use the Internet constantly can judge that their private information may be disclosed on the Internet without their permitting. See Moor. J. (1997). "Towards a Theory of Privacy in the Informational Age." *Computer Ethics: Philosophical Enquiry*, Jeroen van den Hoven (ed.), pp.27-32.

^{*15} This notion is justified as libertarianism based on Mill. See, Mill J.S. (1859). *On Liberty*.

^{*16} Fried C. (1968). "Privacy [a moral analysis]." *Yale Law Journal* 77, pp.475-493. (rpt.) F. D. Schoeman (ed.), *op.cit*, pp.203-222. See especially p.211.

Rachels argues that people must be able to control their personal information and their access to it in order to establish fruitful human relationships^{*17}. This point is based on a theory of control of self-information^{*18}. You are the only person who inherently has the right to know something in your mind and to know how you value each of your acquaintances. If others know these things in your mind, you fail to develop your ideal human relationships. Privacy, argued by Fried and Rachels, means your inner secrets^{*19}.

There are two values which are encroached when privacy is invaded, namely autonomy and the quality of human relationships. Your privacy protected allows you to keep autonomy and the quality of your human relationships. Sharing your personal information is the point of departure of developing friendship with someone you want to get connected with. Privacy is needed for maintaining the quality of human relationships.

2.3 Google's way of invading privacy

In the triggering article published in 1890, Warren and Brandeis pointed out that privacy is a right necessary for human beings. Although the concept of privacy itself was not defined there, they argued that "the right to be let alone" protected "inviolate personality"^{*20}. Warren supposed that people had a right to be free from unreasonable intervention. Warren's wife and children were secretly photographed at a home party with their close friends. When the pictures were exposed to the public eye, Warren thought that the "unpleasantness," or discomfort, he felt then could be expressed as an infringement of the right. In the second half of the twentieth century, the right to control self-information came to the front^{*21}. In the information society of the twenty-first century, the protection of private information is one of the paramount concerns

^{*17} Rachels's choice of the term, human relationship, which we adopt, is deliberate. See Rachels, J, *op.cit.*, pp.291-299. especially p.294

^{*18} As to privacy, Westin advocated the theory of control of self-information. See Westin, A. (1966). "Science, Privacy and Freedom: Issues and Proposals for the 1970's." *Columbia Law Review*, 66, pp.1003-1050.

^{*19} In the history of informational philosophy, another value is emphasized: *freedom from a state control of information*. Privacy used to be thought to be necessary for citizens to protect from public power. The domination by so-called Big Brother would exert a big influence on your thought if it were not for privacy. Privacy here is that your personal information is kept intrinsically. Privacy issues, however, are no longer limited to the framework of the public versus the private in the Internet age. An ordinary person files a lawsuit against Google, which is a private company. And then public servants are not *paradoxical others*, so it is sufficient to confirm that the third value has no direct relation with the discomfort.

^{*20} Warren, S.D., and Brandeis, L.D. (1890). "The Right to Privacy." *Harvard Law Review* 4, pp.193-220. (rpt.) Schoeman F.D. (ed.), *op.cit.*, pp.75-103. See especially p.85.

^{*21} The control theory of privacy requires the condition that all self-information can be controlled by the owners, but this interpretation of privacy is too ideal because no one can track all information uploaded to the server. Additionally, failing to control self-information does not conclude the invasion of privacy promptly. According to Schoeman, "a man shipwrecked on a deserted island or lost in a dense forest has unfortunately lost control over who has information about him, but we would not want to say that he has no privacy". Schoeman, F.D. (1984). "Privacy: Philosophical Dimensions of the Literature, Philosophical Dimensions of Privacy." *Philosophical Dimensions of Privacy*, Schoeman, F.D. (ed.), Cambridge University Press, pp.1-33. See especially p.3.

because it is easier than before to collect and distribute to the world such information insidiously discovered by data mining (or data matching)*²². In this way, protecting privacy has been traditionally interpreted as protecting some right, either the right to be let alone or the right to control self-information*²³. The Japanese legal interpretation of privacy, with which the Japanese general public seem to agree, takes it for granted that the privacy is a right*²⁴.

In section 1.2, we showed that GSV was felt to be a case of the invasion of privacy in Japan*²⁵, while if Google does not invade privacy, it is taken as either one of the two kinds of right mentioned above. We need a broader concept of privacy to accommodate GSV as a case of the invasion of privacy or is GSV's way of invading privacy illusory? Any ethical theory of privacy should take care of the whole sense of the privacy being invaded beyond the sense captured and coped with in legal terms. GSV lets us feel discomfort brought by the invasion of privacy*²⁶.

We characterize the invasion of privacy of a person as the existence of the feeling of the discomfort on his or her part which could be interpreted as being brought about by the deprivation of his or her autonomy or by the deterioration of his or her good human relationship. We call this theory "the discomfort theory of privacy."

Google thinks GSV is OK as regard privacy issues because it copes with the two major possible infringements of the right to privacy. In fact, not only does it blur faces, license plates and nameplates but those who feel uncomfortable can request it to take down the relevant pictures. But the general perception is that, even with such measures, privacy is being invaded, as

*²² As to data mining, an early discussion can be found in Tavani, H.T. (1999). "Informational Privacy, Data Mining, and the Internet." *Ethics and Information Technology*, vol.1-2, pp.214-223.

*²³ There is a counterargument against considering privacy as the right to privacy. According to Schoeman, The proposed definitions of privacy have regarded privacy as a claim, an entailment, or a right of an individual to determine what information about him may be communicated to others. These definitions presuppose privacy as the discretion on personal information: morally significant. That begs the question because there is no explanation why privacy is so significant. It is supposed to discuss whether privacy should be protected or not, in other words, whether privacy in its own is something of value.

See Schoeman, F.D., *op.cit.*, p.3.

*²⁴ Prosser considered privacy as components of existing rights in his paper "Privacy." After that, Thomson supported the consideration in his paper "The Right to Privacy," and Rachels refuted it. See Thomson, J.J. (1975). "The Right to Privacy." *Philosophy and Public Affairs*, vol.4, No.4, Princeton University Press, pp.295-314. And see Rachels, J., *op.cit.*, pp.291-299. Prosser's idea is different from our understanding of privacy in that the infringement of privacy is equated to the breach of the existing rights. We argue that there is an invasion of privacy unaccompanied with the infringement of any right. This is the essential point to explain the discomfort brought about by GSV, which is the primal reason that Prosser's idea is insufficient for settlement of the GSV problems.

*²⁵ A Japanese woman took a legal action against Google by the reason that she had traumatic experience by being published a photograph of her in underwear on the Internet, but this photo was not taken by GSV cameras. <http://headlines.yahoo.co.jp/hl?a=20101216-00000009-mai-soci> Accessed December 16, 2010

*²⁶ The approach has something in common with Arendt's assertions, in which both start conceptual analysis of privacy with the cases of invading someone's privacy. Arendt claimed that privacy is considered as an absence of public character because the word "privacy" comes from the word "privatus" in Latin which means "withdrawn from public life." See, Arendt, H. (1958). *The Human Condition*. University of Chicago Press.

evidenced by the suit filed in Switzerland^{*27} and the German governmental action against introducing GSV services^{*28}. Personal information, or “personal data” in the sense of “information related to an identified individual” (OECD), which can be “blurred” or “masked,” is merely part of the information which the individual thinks is private to her or him. An idiosyncratic scar on a car whose number is masked could, in your mind, signal to others that it is yours. You may think that your height is so peculiar that people you do not know will know the blurred face is yours. Besides, it takes for a while to have your picture taken down from GSV so that your information spreads over the Internet until being taken down in point of fact. *paradoxical other* multiplies in this situation.

It goes without saying that not all kinds of discomfort are results of the invasion of privacy. A series of sleepless night will lead you into the state of discomfort. And a series of unsuccessful grant proposals will frustrate and make researchers uncomfortable. Unlike such, there are cases where discomfort is caused by some kind of actions of others. Robbery is an invasion of property right resulting in discomfort. Exposing the family’s pictures of Warren to the public eye made him uncomfortable, motivating Warren and Brandeis to advocate their theory of the right to privacy.

But, though Google’s invading privacy cannot be characterized as the infringement of right, it is an invasion of privacy. The infringement of right is always accompanied by discomfort, which fact has led most past and contemporary thinkers on privacy to take it for granted of the right, driving them for pursuits after the right which is infringed. Gossiping is not considered as the infringement of the right to privacy^{*29} but we do not want to be gossiped about because we feel uncomfortable when we are gossiped about.

In section 2.2, in the discussion of Fried and Rachels, we confirm the relation between the concept of privacy and the two basic values, autonomy and the quality of human relationships. The discomfort theory of privacy allows us to explain why and how GSV invades privacy. When people think that *paradoxical others* multiply by the presence of GSV, they feel more uncomfortable.

Given a great variety of attitudes and policies concerning GSV in different countries with different cultural and jurisprudential traditions, the discomfort theory of privacy accounts for the nature of privacy more comprehensively than when privacy is defined in terms of rights. Privacy is relative to culture and individual because each community has a different norm and custom and because different people have different ways of feeling good or bad about things.

From the cultural point of view, it is said that Japanese have relatively lenient attitudes

^{*27} “Swiss Court Says Google’s Street View Breaks Privacy Rules.” http://www.pcworld.com/businesscenter/article/224266/swiss_court_says_googles_street_view_breaks_privacy_rules.html Accessed Jan 11, 2012.

^{*28} “German foreign minister joins criticism of Google’s mapping program.” <http://www.dw-world.de/dw/article/0,,5910738,00.html> Accessed Jan 12, 2012.

^{*29} Warren, S.D., and Brandeis, L.D., *op.cit.*, See pp.87-90.

toward privacy^{*30}. For it has been said that there are unique ethnic character and residence style: Even the construction of the Japanese house — the thin walls that permit the passage of sounds and which are pushed open during the day — makes private life extremely public for those who cannot afford a wall and garden^{*31}. This passage from *The Chrysanthemum and the Sword* is popular as a description about the norm of privacy committed by Japanese. In this way, the concept of privacy is likely to be understood as a limited notion accepted in a certain cultural sphere. It, however, does not matter whether this type of the view on privacy is really a Japanese one and what the privacy is for Japanese. Our discomfort theory of privacy is not dependent on either society or culture^{*32}. Since the Internet crosses the borders, it is inappropriate to investigate the concept in terms of particular cultural situation in which it is applied.

We have stressed the relation between privacy and the essential values. By doing so, we are able to prevent ourselves from falling into radical relativism, while admitting the subjectivity of autonomy, which is one of the essential values. Autonomy is infringed when people only think they lose their autonomy and that privacy has a subjective aspect. Some want to conceal their information more than needed, others never conceal them. The former think too much seriously about autonomy, the latter do not. The values we should hold involve not only autonomy but also the quality of human relationships. Protecting privacy means keeping both values, allowing us to show those who are hypersensitive or oblivious that their extreme attitudes are not tenable. We can exclude the radical relativism that anything goes with privacy by exaggerating the relative nature of autonomy.

3 Lessons from GSV

3.1 Google's allegations for complaints about privacy

Google defends itself against the accusation that GSV intruded upon someone's privacy in the following two manners. Firstly, Google says that "[t]oday's satellite-image technology means that [...] complete privacy does not exist^{*33}." Secondly, "[t]hese are all images that anyone could go out and take with a camera. We do take great care that if someone did feel their privacy was invaded, there is a way that they can easily tell us about it and we'll remove it right away. But all the pictures are taken in public areas where anyone could go [and] take a

^{*30} An independent administrative institution in Japan, Information-technology Promotion Agency (IPA) released an interesting report on privacy of Japanese. In this article, it is noted that Japanese are more unconscious of their privacy than EU citizen. <http://www.ipa.go.jp/security/economics/report/eid201008.html> (Japanese) Accessed May 20, 2011.

^{*31} Benedict R. (1954). *The Chrysanthemum and the Sword*. Charles E. Tuttle Company, p.288.

^{*32} One of the recent sociological studies concerning privacy in Japan is: Tamura, T. (2004). "Japanese Feeling of Privacy." *MANUSYA: Journal of Humanities, Special Issue* No.8, Chulalongkorn University, pp.121-139.

^{*33} "Google wins Street View privacy suit." February 18, 2009, http://news.cnet.com/8301-1023_3-10166532-93.html Accessed April 20, 2010.

picture^{*34}.”

In the first argument, Google insists that GSV is OK because satellite-image technologies are accepted in most advanced societies. We could add other monitoring technology, such as surveillance cameras in the public places and highways and filtering software allegedly protecting children. Unless Google assumes that the society which accepts and benefits from some technology cannot deny any consequence of adopting that technology, it should be admitted that the “complete privacy” does not exist. Apart from the interpretation of the concept of privacy, however, adopting a technology does not necessarily mean swallowing all the consequences thereof. You are entitled to complain of having your privacy invaded by the GSV even though you can bookmark the webpage of GSV. You might rightly complain that you cannot do what you want to do freely and have to change your behavior because someone may be looking at you, namely that your autonomy is encroached. We tolerate the consequences of GSV, in spite of its obvious invasion of privacy, only in relation with other values which are shared in our society, including convenience in life and easier access to information. If you should hold social order the dearest, you could allow the feudal king, the modern dictator, the public servant or the guard behind the monitor of surveillance cameras to watch you and your fellow citizens, after weighing the perhaps conflicting social values. You do not know who other than you is watching by way of GSV. Everyone might be watching you. Someone you utterly do not know might be watching you. Anyone could be watching you. Those who might be watching you by way of GSV are not entitled to do so in consideration of shared social values. All this leads to your real discomfort which any socially accepted monitoring systems would not give rise to.

In the second argument, Google asserts that shooting on the street and uploading the images are not regarded as the invasion of privacy, because an outward appearance of your house, being exposed to the public, is not a private matter. Admittedly the outward appearance of a house is public, but the shooting of it and uploading the image of it are conceptually two different things. Once uploaded, the image of your house is quite easily and cheaply available on the Internet to anyone who even inadvertently clicks, to a potentially very large number of viewers on the Internet. Neither do you know them nor they know you. But they have access to what you normally do not expect them to. They are *paradoxical others* in the sense defined section 2.1. We have already established that the sense of the existence of a *paradoxical other* causes discomfort, hence the invasions of privacy^{*35}. Neither of Google’s two arguments actually denies the invasion of privacy, according to the discomfort theory of privacy. The Google’s arguments

^{*34} “Google denies Street View has privacy issues.” by Munir Kotadia and Chris Duckett, ZDNet Australia on June 5th, 2007. <http://www.zdnet.com.au/google-denies-street-view-has-privacy-issues-339278182.htm> Accessed May 20, 2011.

^{*35} One of the advantages of our argument is to highlight the character of discomfort which does not imply a logical relation to the actual number of the people who access the private information of the person in question.

do not hold.

3.2 Disclosing private information with SNS

Google uploads and displays your private information without any notice or apology. Someone may upload it as well when she or he shoots your images with a camera attached to her or his mobile phone. Displaying private information enhances the existence of possible *paradoxical others*, with a result of putting your privacy at a risk. SNS, such as Facebook, Mixi^{*36} or Twitter, users voluntarily release their private information with the aim of interacting socially with their friends. When you use SNS, you also feel discomfort in some cases. You use SNS in order to establish and maintain good human relationships with your friend rather than to betray your information to total strangers. The latter alone leads to the discomfort brought by potential invasion of privacy. To prevent users' privacy from being invaded, GSV, SNS and similar services should have a mechanism with which each user can control on what information to disclose to whom. Or you, as a morally good agent, decide to avoid staring at or searching for someone's private information.

An SNS is theoretically a community of people who know each other. Even in such a community, your autonomy is influenced to some extent by the fact that you are being watched. In fact, a democratic community adopts the secret ballot just in order for its members to be autonomous in voting. Good and frank human relationship between wife and husband could be only possible with some guarantee of confidentiality of their conversation. In a certain type of SNS, like Twitter, some followers of a tweeter could be her or his paradoxical others, your suspicion of whose possible knowledge of your thoughts may influence what and how you think and tweet next.

The infiltration of SNS may help someone do physical damage or harassment as well as non-physical damage. SNS helps to perform real-time communication with a location data^{*37}. This brings about a situation in which someone right behind of you, in a library, station or restaurant, could be searching for you. Not only is your autonomy undermined more easily than before, but in this situation where strangers and stalkers on top of your acquaintance can easily keep track of you at any time, there is another problem, which would be more serious than the situation of *paradoxical others* only. It could cause the actual harm. Suppose that the factual information "Hanako is in the Sapporo City Library at two o'clock" is published in real time. Someone may take advantage of that information, and come to the place where she is and watch her surreptitiously. If it were actually happened, an insecure feeling of being actual harm would be given rise to. Without such services, you yourself were never linked to your information in such

^{*36} The Japanese private company, *Mixi*, provides a social networking service with the same name as the company.

^{*37} The information in SNS sites is constantly stored in the databases and used to link users who have similarities in their behaviour or interest, or who tend to be in the same place, at the same time.

an instant way. Needless to say, the problem of *paradoxical others* also emerges in this situation.

Conclusion

GSV brought out an aspect of privacy issue which was not seriously thought until the advent of the Internet and the World Wide Web. It does invade people's privacy in the sense that it encroaches on your autonomy and/or the quality of your human relationships, thereby causing a certain kind of discomfort on your part. Since it is fair to assume that the infringement of the right to privacy is almost always accompanied by some discomfort, discomfort characterizes the invasion of privacy more generally than the infringement of right. Not all kinds of discomfort are results of the invasions of privacy, though. The discomfort felt upon the invasion of privacy is determined by the human values we associate with autonomy and/or the quality of human relationships. In this article, we have proposed this way of understanding privacy and the invasion of privacy in the name of the discomfort theory of privacy.

Although the existence of the discomfort of the aforementioned kind was and is invariably characteristic of any invasion of privacy, such discomfort has not been brought to people's consciousness until the advent of the Internet, the World Wide Web, search engines, blogs, GSV and social networking services. Such services promote the possibility of the emergence of *paradoxical others* as defined in the proceeding sections, and that is why we are sure that discomfort defines (the invasion of) privacy. Combined with personal location data transmitted over the mobile network on such services as Facebook, Twitter, LinkedIn, Foursquares, Google+ and a whole lot of others, you will be known to your *paradoxical others* whom you don't know through the information you provide for and share at the services, which is already unprecedented in human history in itself, but in the case of GSV, the way the other people who normally are not interested in where you live will know it without knowing you or even without being interested in knowing it. Even worse, you know that you are known to those you don't know, making the number of the potential others who know you and where you live. You do not know who is the paradoxical other but know there is *paradoxical other*. To be watched by someone influences your autonomy and human relationships. The idea of *paradoxical others* should be highlighted this way in the context of privacy.

What attitude is the most recommendable in living with GSV? While it is inappropriate to discuss the details of the possible legislative measures to control GSV or, more passively, advise the public on the morals and good practices vis-a-vis GSV, it is clear from our discussion in this article that Google has the responsibility for what GSV has brought about. It has brought about the recognition of the importance of the notion of discomfort and *paradoxical others* in understanding the nature of privacy to a greater extent than any other ICT implementations and SNS platforms. The Internet services of Google give you a convenience in return for gathering your personal information thoroughly. They have to make their data more accessible to the

interested parties so as to help them to analyze the data more closely and determine the effects of the operation of GSV all over the world.

References

- Aristotle. *Nicomachean Ethics*.
- Arendt, H. (1958). *The Human Condition*. University of Chicago Press.
- Benedict, R. (1954). *The Chrysanthemum and the Sword*. Charles E. Tuttle Company.
- Bentham, J. (1791). "Panopticon." *The Panopticon Writings*, Miran Bozovic (ed.), London: Verso, 1995, pp.29-95.
- Floridi, L. (2010). "The Fourth Revolution." *Newsweek* (Japanese Edition). Available at <http://newsweekjapan.jp/stories/2010/02/post-958.php>. Accessed March 12, 2010.
- Fried, C. (1968). "Privacy [a moral analysis]." *Yale Law Journal* 77, (rpt.) F. D. Schoeman (ed.), *Philosophical Dimensions of Privacy*, Cambridge University Press, 1984, pp.203-222.
- Johnson, D. (2001). *Computer Ethics* 3rd ed.. Englewood Cliffs, New Jersey: Prentice Hall, Inc.
- Kawaguchi, K. (2009). "Privacy in Ubiquitous Computing Environments : Ethical problem of "Google Street View" and "Sekai Camera." *IEICE Technical Report* 109(74), pp.71-75.
- Moor, J.H. (1997). "Towards a Theory of Privacy in the Information Age." *Computer Ethics: Philosophical Enquiry*, Jeroen van den Hoven (ed.), pp.27-32.
- (1989). "How to Invade and Protect Privacy with Computer Ethics." *The Information Web*, Carol C. Gould (ed.), Boulder: Westview, pp.57-70.
- Mizutani, M., Dorsey, J. and Moor, J. (2004). "The Internet and Japanese Conception of Privacy." *Ethics and Information Technology*, vol.6, No.2, pp.121-128.
- Prosser, W. L. (1960). "Privacy [a legal analysis]." *California Law Review*, vol.48. pp.383-423.
- Rachels, J. (1975). "Why Privacy is important." *Philosophy and Public Affairs* 4(4), (rpt.) F. D. Schoeman (ed.), *Philosophical Dimensions of Privacy*, Cambridge University Press, 1984, pp.291-299.
- Schoeman, F. (1984). "Privacy: Philosophical Dimensions of the Literature, Philosophical Dimensions of Privacy." *Philosophical Dimensions of Privacy*, F. D. Schoeman (ed.), Cambridge University Press, 1984, pp.1-33.
- Solove, D. J. (2008). *Understanding Privacy*. Harvard University Press.
- Tavani, H.T. (1997). "Internet Search Engines and Personal Privacy." *Computer Ethics: Philosophical Enquiry, Department of Philosophy*, Jeroen van den Hoven (ed.), Erasmus University, pp.214-223.

- Thomson, J. J. (1975). "The Right to Privacy." *Philosophy and Public Affairs*, vol.4, No.4, Princeton University Press, pp.295-314.
- Warren, S. D. and Brandeis, L. D. (1890). "The Right to Privacy." *Harvard Law Review* 4, (rpt.) F. D. Schoeman (ed.), *Philosophical Dimensions of Privacy*. Cambridge University Press, 1984, pp.75-103.
- Spinello, R. A. (2010). "Informational Privacy." *The Oxford Handbook of Business Ethics*, Brenkert, G. G. and Beauchamp, T. L. (ed.), Oxford University Press, pp.366-387.

About Authors

Kanako KAWAGUCHI (Toho University and Aoyama Gakuin University, kanakothird@hotmail.com)

Yukiko KAWAGUCHI (Uekusa Gakuen University, y-kawaguchi@uekusa.ac.jp)